

Department of Veterans Affairs

§ 51.40

(d) If, during the process for recognition and certification, the director of the VA medical center of jurisdiction recommends that the State home facility or facility management does not meet the standards of this part or if, after recognition and certification have been granted, the director of the VA medical center of jurisdiction determines that the State home facility or facility management does not meet the standards of this part, the director will notify the State home facility in writing of the standards not met. The director will send a copy of this notice to the State official authorized to oversee operations of the facility, the VA Network Director (10N 1-22), the Chief Network Officer (10N), and the Chief Consultant, Geriatrics and Extended Care (114). The letter will include the reasons for the recommendation or decision and indicate that the State has the right to appeal the recommendation or decision.

(e) The State must submit the appeal to the Under Secretary for Health in writing, within 30 days of receipt of the notice of the recommendation or decision regarding the failure to meet the standards. In its appeal, the State must explain why the recommendation or determination is inaccurate or incomplete and provide any new and relevant information not previously considered. Any appeal that does not identify a reason for disagreement will be returned to the sender without further consideration.

(f) After reviewing the matter, including any relevant supporting documentation, the Under Secretary for Health will issue a written determination that affirms or reverses the previous recommendation or determination. If the Under Secretary for Health decides that the facility does not meet the standards of subpart D of this part, the Under Secretary for Health will withdraw recognition and stop paying per diem for care provided on and after the date of the decision (or not grant recognition and certification and not pay per diem if the appeal occurs during the recognition process). The decision of the Under Secretary for Health will constitute a final decision that may be appealed to the Board of Veterans' Appeals (see 38 U.S.C. 7104 and

7105 and 38 CFR part 20). The Under Secretary for Health will send a copy of this decision to the State home facility and to the State official authorized to oversee the operations of the State home.

(g) In the event that a VA survey team or other VA medical center staff identifies any condition that poses an immediate threat to public or patient safety or other information indicating the existence of such a threat, the director of VA medical center of jurisdiction will immediately report this to the VA Network Director (10N 1-22), Chief Network Officer (10N), Chief Consultant, Office of Geriatrics and Extended Care (114) and State official authorized to oversee operations of the State home.

(Authority: 38 U.S.C. 101, 501, 1710, 1741-1743)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0160)

[65 FR 968, Jan. 6, 2000, as amended at 74 FR 19432, Apr. 29, 2009]

§ 51.31 Automatic recognition.

Notwithstanding other provisions of this part, a facility that already is recognized by VA as a State home for nursing home care at the time this part becomes effective, automatically will continue to be recognized as a State home for nursing home care but will be subject to all of the provisions of this part that apply to facilities that have achieved recognition, including the provisions requiring that the facility meet the standards set forth in subpart D and the provisions for withholding per diem payments and withdrawal of recognition.

Subpart C—Per Diem Payments

§ 51.40 Basic per diem.

Except as provided in § 51.41 of this part,

(a) During Fiscal Year 2008 VA will pay a facility recognized as a State home for nursing home care the lesser of the following for nursing home care provided to an eligible veteran in such facility:

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(1) One-half of the cost of the care for each day the veteran is in the facility; or

(2) \$71.42 for each day the veteran is in the facility.

(b) During Fiscal Year 2009 and during each subsequent Fiscal Year, VA will pay a facility recognized as a State home for nursing home care the lesser of the following for nursing home care provided to an eligible veteran in such facility:

(1) One-half of the cost of the care for each day the veteran is in the facility; or

(2) The basic per diem rate for the Fiscal Year established by VA in accordance with 38 U.S.C. 1741(c).

(Authority: 38 U.S.C. 101, 501, 1710, 1741–1744)
[74 FR 19432, Apr. 29, 2009]

§51.41 Per diem for certain veterans based on service-connected disabilities.

(a) VA will pay a facility recognized as a State home for nursing home care at the per diem rate determined under paragraph (b) of this section for nursing home care provided to an eligible veteran in such facility, if the veteran:

(1) Is in need of nursing home care for a VA adjudicated service-connected disability, or

(2) Has a singular or combined rating of 70 percent or more based on one or more service-connected disabilities or a rating of total disability based on individual unemployability and is in need of nursing home care.

(b) For purposes of paragraph (a) of this section, the rate is the lesser of the amount calculated under the paragraph (b)(1) or (b)(2) of this section.

(1) The amount determined by the following formula. Calculate the daily rate for the CMS RUG III (resource utilization groups version III) 53 case-mix levels for the applicable metropolitan statistical area if the facility is in a metropolitan statistical area, and calculate the daily rate for the CMS Skilled Nursing Prospective Payment System 53 case-mix levels for the applicable rural area if the facility is in a rural area. For each of the 53 case-mix levels, the daily rate for each State home will be determined by multiplying the labor component by the nursing home wage index and then add-

ing to such amount the non-labor component and an amount based on the CMS payment schedule for physician services. The amount for physician services, based on information published by CMS, is the average hourly rate for all physicians, with the rate modified by the applicable urban or rural geographic index for physician work, and then with the modified rate multiplied by 12 and then divided by the number of days in the year.

NOTE TO PARAGRAPH (b)(1): The amount calculated under this formula reflects the applicable or prevailing rate payable in the geographic area in which the State home is located for nursing home care furnished in a non-Department nursing home (a public or private institution not under the direct jurisdiction of VA which furnishes nursing home care). Further, the formula for establishing these rates includes CMS information that is published in the FEDERAL REGISTER every summer and is effective beginning October 1 for the entire fiscal year. Accordingly, VA will adjust the rates annually.

(2) A rate not to exceed the daily cost of care for the month in the State home facility, as determined by the Chief Consultant, Office of Geriatrics and Extended Care, following a report to the Chief Consultant, Office of Geriatrics and Extended Care under the provisions of §51.43(b) of this part by the director of the State home.

(c) Payment under this section to a State home for nursing home care provided to a veteran constitutes payment in full to the State home by VA for such care furnished to that veteran. Also, as a condition of receiving payments under this section, the State home must agree not to accept drugs and medicines from VA on behalf of veterans provided under 38 U.S.C. 1712(d) and corresponding VA regulations (payment under this section includes payment for drugs and medicines).

(Authority: 38 U.S.C. 101, 501, 1710, 1741–1744)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0160)

[74 FR 19432, Apr. 29, 2009]